

**From:** Alex Morgan  
**To:** Microsoft ATR  
**Date:** 1/23/02 7:56pm  
**Subject:** Microsoft Settlement

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To:  
Renata B. Hesse  
Antitrust Division  
U.S. Department of Justice  
601 D Street NW  
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Washington, DC 20530-0001

Subject: Microsoft Settlement

To Whom It May Concern (or Renata B. Hesse):

I would like to submit my comments regarding the Microsoft Settlement in the United States of America vs. Microsoft case as per the Tunney Act. I believe that in its current state, the Stipulation and Revised Proposal Final Judgement of the United States of America vs. Microsoft Corporation is designed to prevent Microsoft from engaging in the very behavior which led to its being found guilty, and in that regard, is fine. However, there are several problems with the entire settlement that in my opinion, should lead to scrapping most of, if not all of the judgement. In its current state, the document does not properly punish Microsoft for its guilty actions, nor does it completely prevent Microsoft from doing the same things again in a Monopoly fashion. Instead, if this Stipulation and Revised Proposal Final Judgement is accepted, Microsoft will simply use its monopoly position to change the methods by which it prevents competition from gaining a foothold in the market and taking away any of Microsoft's current market share.

I want to focus on one particular section, which I believe undermines the entire settlement and judgement agreement. In regards to section III-J of the Stipulation and Revised Proposal Final Judgement, I believe that this section will result in additional civil trials. Specifically, Microsoft will argue it cannot open its source code as it is protected by section III-J, and therefore, they cannot fulfill the other obligations of allowing "Non-Microsoft Middleware" to be freely operated as they would have to open source their computer code that would affect their operations, copyrights, and intellectual assets as protected in Section III-J. Section III-J.2. tries to address this point, but it becomes a very circular argument, as Microsoft can argue it knows its software

best and opening it up would indeed violate Section III-J.1., even though they are partially required to do by Section III-J.1. While the three person Technical Committee (TC) in Section IV-B is designed to assist in determining which Microsoft source code is open for use and which isn't, it is very likely that Microsoft will argue in court against every single request of the TC. Further, it is likely that since Microsoft code is designed to be thoroughly intermingled, such that any Microsoft application works smoothly with any other Microsoft application, that opening ANY source code given to "Non-Microsoft Middleware" companies would violate Section III-J.1. Even if it is possible to separate out aspects of the code covered under Section III-J.1., such that source code could be given to "Non-Microsoft Middleware" companies, it is likely that this new software would not work as well as Microsoft "Middleware" products which have full access to the source code. Therefore, since this new non-Microsoft "Middleware" does not work as well as it should, it would quickly fall out of use among consumers because it didn't work. However, it would have failed directly by being set up for failure by Microsoft, and indirectly from consumer choice/market forces because the product could never work properly on a Microsoft-based operating platform. This final point is the most crucial because of the fact that Microsoft does indeed have an operating system majority (monopoly) on operating systems for most of the desktop computers in the U.S.A. If the new non-Microsoft Middleware cannot properly work on the majority of US computers since most of them have Microsoft Windows on it, how can the Middleware producers compete at all?

I now want to address the whole decision, and share my thoughts on the logic under the judgement, which I believe is partially flawed under the logic of laws, punishment, and justice. As I mentioned above, while I do believe that the judgement will prevent Microsoft from doing most of the actions it did before, it is not receiving any punishment for those actions. The actions prohibited in the document were illegal to begin with, and this judgement merely states that Microsoft will stop doing illegal actions, which by law, they should not be doing in the first place. Further, if they do these illegal actions, they should be expected to be punished under the law if found guilty. They were found guilty of monopolistic acts

outlined in the Sherman Act, and therefore, should be punished. Since Microsoft's practices have hurt certain non-Microsoft "Middleware" companies, certain US states covered in this case, and possibly the US consumer due to lack of product choice, it stands to reason that a punishment against Microsoft, perhaps leading to compensation of the plaintiffs, should be part of this settlement. As I looked through the settlement, I did not see this covered at all.

However, this sort of compensation, and attaching a monetary value to it, will likely result in unending greed and even more lawsuits which ultimately will not result in a proper handling of justice in this case.

Unfortunately, any punishment against Microsoft will most likely result in hurting its base employees, which may not have been guilty of the actions that led to this settlement. Therefore, monetary actions should be taken out against Microsoft management and leadership, since they approved the actions that led to their guilt in this case. I believe this is important, otherwise the guilty upper leadership will simply take the monetary damages out on others in its company, resulting in unemployment of solid lower-level workers who were not guilty.

If monetary compensation will result in more injustice, then another solution makes more sense. Since most everyone (US and worldwide) uses Microsoft's base operating system (Windows) for its computers, it suggests that Microsoft's Windows OS has become the de facto standard of operating system for computer users. Therefore, to ensure they cannot exploit this monopoly further, (which they were proven guilty of) their source code, which enabled their monopoly, must be opened for EVERYONE to use. Microsoft should not be allowed to collect royalties on it, and all copyrights must be removed allowing all computer programmers, who desire to make products for commercial use, to work with the base source code free of charge. What this does is that it completely levels the playing field for all computer "Middleware" producers, such that no one has an advantage due to proprietary source code which everyone has a working copy of, but only one company (Microsoft in this case) has full access to. Now Microsoft will be forced to compete with everyone else on level footing, and any market share they gain will be due to hard work and product acceptance, not from unfair market advantages imposed by monopolistic practices. Therefore,

Microsoft is effectively punished by removing the monopoly that it currently enjoys and uses to make profits at the expense of others.

If this were the proposed punishment and settlement for this case, I suspect Microsoft would oppose it violently, but it would indeed end the monopoly and force Microsoft to work just as hard as everyone else to get a product accepted by the market. Microsoft would not be at a complete disadvantage in this environment, as they still produce updates to the operating system that everyone buys, so they still maintain huge market share in operating systems. Under my suggestion mentioned above, the operating system would be open for all to use, and Microsoft would be forced to use its extensive wealth to develop new products and innovations to compete with all the new players in the market of "Middleware". Therefore, the consumers, states, and US all win due to all the new choices and the loss of the previous monopoly.

If you desire more clarification on what I've written here, or need additional information, please feel free to contact me. Thank you for your time and for reading my comments regarding this decision and settlement.

Sincerely,

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